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## The Legitimacy of International Law

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# Global Political Theory

Edited by

DAVID HELD AND PIETRO MAFFETTONE

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# The Legitimacy of International Law

*David Lefkowitz*

The conduct of international affairs is subject to three kinds of normative standards. The first of these is prudence or rational self-interest, and its most common manifestation in international affairs involves reference to a state's national interest as a basis for defending or critiquing its international conduct. Justice provides a second metric for assessing the international conduct of states, and sometimes other actors, and a set of normative concepts including freedom, equality and fairness with which to argue for or against particular acts or policies. Law, including both international law and the foreign law of particular states, provides the third normative framework commonly employed by those engaged in or otherwise concerned with international affairs. Thus an international act, such as one state's invasion of another, can be criticized as imprudent, and/or as unjust and/or as illegal. As normative claims, each of these criticisms purports to give the invading state a reason to desist, and at least in the case of the second and third criticisms, entails that the invaded state and perhaps other actors (for example, other states) have a reason to treat the invading state in ways they would not otherwise be justified in doing. The focus of this chapter is on how international law performs this function; that is, it aims to explain why and when the fact that an act would violate international law in itself provides an actor with a reason, indeed a moral obligation, not to perform it. The answer, I shall argue, is that international law does so if and only if it is legitimate.

I begin in the first section with an analysis of the concept of legitimacy. What does it mean to attribute legitimacy to international law, or to characterize the legal framework that constitutes, say, the World Trade Organization (WTO) as illegitimate? Sections 2–3 consider a number of possible grounds for international law's legitimacy, including the contributions it can make to its subjects' ability to act as they have most reason to act, the consent of those it claims as subjects, considerations of fair-play, and its democratic credentials. My focus in each case is twofold: first, with arguments for thinking that a particular ground is either necessary or sufficient for international law's legitimacy; and, second, with the implications the account in question has for international law's present claim to legitimacy. As will become clear, none of the grounds for international law's legitimacy considered herein,

separately or in combination, show the existing international legal order to be fully legitimate; indeed, it likely falls well short of that (perhaps ideal) standard. Still, just as the failure of any existing social order to realize a conception of justice does not by itself provide a reason to reject that conception, so too the failure of the international legal order to qualify as legitimate according to some standard of legitimacy does not by itself provide a reason to reject that standard. I conclude in section 4 by offering a number of reasons why we should care about international law's legitimacy; indeed, why from a moral point of view increasing the international legal order's legitimacy might even take priority over making it more just.

## 1 The Concept of Legitimacy

Judgments of political legitimacy concern attempts to rule or govern. A attempts to rule or govern B with respect to some domain of conduct if and only if A maintains that B ought to defer to A's judgment regarding what B may, must or must not do; that is, if and only if A claims practical authority over B.<sup>1</sup> When A does so, she maintains that her directives provide B with content-independent and exclusionary reasons for action. So, if A claims authority over B and she directs B not to  $\Phi$ , then she maintains that B has a reason not to  $\Phi$  simply because A instructed him not do so, a reason that makes no reference to the content of A's direction to B (i.e., what  $\Phi$ -ing is). Moreover, she maintains that B ought to treat A's instruction not to  $\Phi$  as a reason to exclude from his deliberation some or all of the reasons he might have to  $\Phi$ . From B's perspective, to treat A's directive as a content-independent and exclusionary reason just is to defer to A's judgment; that is, to recognize her as having practical authority over him.

A's attempt to rule over B is *legitimate* if and only if A has a right to rule B, a right that correlates to B's duty to obey A. Strictly speaking, what the subject of a legitimate authority owes her is not conduct, but a certain form of deliberation or practical reasoning, one that treats the authority's directives as content-independent and exclusionary reasons for action. In terms of Hohfeld's (1919) well-known typology of rights, then, the right to rule should be understood as a moral power rather than a claim-right, with the authority's subjects bearers of a moral liability (to have their deliberation shaped by the authority's directives) rather than a duty. Particular conduct may also be owed to the ruler, but it need not be. For example, and in Hohfeldian terms, B may have a duty not to damage C's property, one correlative to C's property right, and a liability to A's judgment regarding what counts as damage to C's property (i.e., what the content of C's property right is), correlative to A's moral power to direct B's conduct (*vis-à-vis* C's property). Getting clear on this conceptual point is important if we are to avoid the common but mistaken assumption that a successful theory of legitimacy must explain how those subject to a putative authority can owe *it* conduct in accordance with its

directives. Nevertheless, and at the risk of inviting this confusion, I will continue to speak of subjects' duty to obey an authority, since this is the language commonly employed in discussions of legitimacy.

To claim the right to rule is not to have it. If A's attempt to rule over B is illegitimate, then while A may claim that B ought to treat her instruction not to  $\Phi$  as a content-independent and exclusionary reason, B has no duty to do so. Note, however, that B may still have prudential or moral reasons not to  $\Phi$ , perhaps even conclusive ones; the denial of a putative authority's legitimacy is neither equivalent to, nor entails, the claim that an agent should not act as the putative authority would have him act. Moreover, A's attempt to rule over B may correctly be judged to be good, or at least better than the likely alternatives, even if A has no right to rule B. Both of these points bear emphasis, since, as will become clear below, at present international law often lacks the authority it claims; that is, it is illegitimate. A mistaken understanding of what follows from this conclusion may explain why some theorists argue that we ought to use a less demanding conception of legitimacy, one that correlates to duties of support and non-interference but not to a duty to obey, and/or employ more easily satisfied criteria to justify claims to legitimacy when theorizing international law than we do when theorizing municipal or state law (Buchanan, 2010). Once we recognize that agents can have compelling reasons to support illegitimate institutions, to work for their reform rather than their elimination or wholesale replacement, we should find unpersuasive this rationale for introducing different conceptions of legitimacy, or different standards for when legal institutions enjoy it.<sup>2</sup>

Some theorists maintain that, in addition to the right to issue authoritative directives, the concept of legitimacy includes the right to enforce those directives, or more generally the right to impose costs on those who fail to act as directed or to grant benefits to those who do. The tendency to do so may reflect the common description of certain uses of force as legitimate or illegitimate, or the fact that much theorizing about the concept of legitimacy takes as its subject modern states' attempts at governance. Whatever the cause, we should reject this characterization of legitimacy and instead treat enforcement, or the imposition of costs or granting of benefits more generally, as simply another form of conduct over which authority may be exercised, but not conduct in which an agent must engage in order to qualify as an authority. To claim authority over the enforcement of authoritative directives is simply to claim the authority to determine who may use force against those who fail to act as directed, when they may do so, and what form the use of force may or may not take. In the modern state, those authorized to enforce the law are often legal officials; that is, legislative and judicial officials authorize officials of the executive branch of government to execute or enforce the law. But this is not always the case; for example, modern states authorize private actors to use force in self-defence, in light of which we often describe such acts as legitimate. Within the international legal order, almost all law

enforcement takes the form of legally authorized self-help. For instance, the WTO enforces the ruling of its dispute settlement body by authorizing the party that brought the complaint to impose limited countermeasures against the party found to be in violation of its legal obligations as a member of the WTO. We appear to have good reason, then, to characterize the *concept* of legitimacy solely in terms of the exercise of authority, even if the *justifiability* of a putative authority's claim to legitimacy depends on its ability to reliably impose costs on the disobedient and grant benefits to the obedient.

In crafting public international law, states and international organizations assert that those subject to the law have a duty to obey it. The fact that a state has an international legal obligation to forbear from armed intervention in another state's territory except under very specific conditions is alleged to provide it with a content-independent and exclusionary reason not to do so. Similarly, as a signatory to the WTO a state has an international legal obligation not to impose tariffs on select goods imported from other WTO members (again, except under very specific conditions), a legal obligation that is alleged to provide it with a content-independent and exclusionary reason not to perform these acts. What these legal obligations purport to exclude is a state acting on its own judgment that armed intervention or the imposition of tariffs will advance its national interest or promote justice. Whether these judgments are true or false, if the international legal norms that create the aforementioned obligations are legitimate, then states are not free to act on those judgments, but must defer to the law's judgment that such acts ought not to be performed.

With a clearer understanding of the concept of legitimacy, we can now consider the conditions under which agents, and in particular international legal officials, possess it. By 'international legal officials', I mean state officials engaged in crafting or applying international law, as well as officials in international legal institutions such as the WTO and the International Court of Justice (ICJ). International legal officials attempt to exercise authority by issuing general rules or specific decisions that are intended to guide international legal subjects. Questions regarding the legitimacy of international law, then, are questions about when and why these attempts to exercise authority succeed or fail – or put another way, when and why international legal subjects should or should not treat their legal obligations as providing them with content-independent and exclusionary reasons for action.

## 2 The Instrumental Argument for International Law's Legitimacy

### *What makes international law legitimate?*

Justifications of authority fall into one of two categories: those in which deference to authority is instrumental to the just treatment of others, and more

broadly to acting as one has reason to act, and those in which deference to authority is (also) constitutive of the just treatment of others. In contemporary debates, the first of these approaches is most closely associated with the philosopher Joseph Raz, with John Tasioulas and Samantha Besson among those who have drawn on Raz's work to offer an analysis of international law's legitimacy (Raz, 1979, 2006; Besson, 2009; Tasioulas, 2010). According to Raz, law is legitimate, or has a justified claim to authority vis-à-vis its subjects, when the following two conditions are met:

- 1 The Normal Justification Condition (NJC): The subject would better conform to reasons that apply to him anyway (that is, to reasons other than the directives of the authority) if he intends to be guided by the authority's directives than if he does not.
- 2 The Independence Condition (IC): The matters regarding which the first condition is met are such that, with respect to them, it is better to conform to reason than to decide for oneself, unaided by authority (Raz, 2006: 1014).

A's claim to authority over B is justified, then, if B is more likely to act as he has most reason to act by deferring to A's judgment regarding what he should or should not do than by acting on his own judgment, except in cases where it is more important that B decide for himself what to do than that he decide correctly (i.e., than that he do what he has most reason to do). In such cases, A enjoys a right to rule B, and B has a duty to obey A's directives.

Some theorists contend that the NJC does not suffice to justify one agent's claim to authority over another. They argue that the mere fact that B will do better at acting as he has most reason to act if he defers to A's judgment does not entail that A has a right to rule B (e.g., Buchanan, 2010: 85). Raz concedes this point in some cases, namely those where it is more important that an agent act on his own judgment than that he act in accordance with right reason. When and why this is the case is a point over which theorists may disagree without disputing Raz's general account of when one agent's claim to authority over another is justified. Moreover, it is not merely the fact that an agent will do better at acting on the reasons that apply to him by deferring to the law that renders the law legitimate. Rather, it is that fact in conjunction with the nature of the reasons that apply to the agent independently of the law that does so. In the most general terms, if B has a moral duty to treat C justly, a reason for action that exists independently of the law, and if B is more likely to fulfil that duty by obeying the law than by acting on his own judgment, then those two facts suffice to establish the law's right to rule B. If, in fact, B is more likely to treat C justly if she defers to A's judgment regarding what that requires than if she acts on her own judgment, then it is hard to see why that does not suffice to establish A's right to rule B properly conceived; that is, as A enjoying a moral power to determine the reasons for action B ought to consider vis-à-vis her treatment of C, a power A exercises



by issuing directives that provide B with content-independent and exclusionary reasons for action.

Some argue that satisfaction of the NJC cannot suffice to establish the law's authority over an agent because, if it did, then even a deeply unjust state could be legitimate (see, e.g., Christiano, 2008: 234). The fact that state officials or some of its subjects stand ready to perpetrate even greater injustices if an individual does not act as the law directs may give the individual a reason to treat the law as authoritative, but surely it does not entail that the state has a *right* to rule the individual; that is, that it enjoys *legitimate* authority. In response, it is important first to keep in mind that on Raz's instrumental account the duty to obey (some of) the laws of an unjust state is owed not to the state, but to those individuals a person is more likely to treat justly by obeying the law than by acting on his or her own judgment. But second, we should distinguish between the NJC being satisfied and an agent having good reason to believe that it is. Subjects of a deeply unjust state will often have little reason to believe that either its law or its legal institutions aim to improve their conformity to the independent (moral) reasons that apply to them; that is, that the law represents a good faith effort to satisfy the NJC. Therefore, they will have little or no reason to treat it as authoritative – that is, as providing them with content-independent and exclusionary reasons for action. This is likely to be so even where, as a matter of fact, the law of a deeply unjust state does satisfy the NJC, at least vis-à-vis some of its subjects. In such cases, while the individuals in question ought to defer to the law rather than act on their own judgment, they will likely not be blameworthy for their failure to recognize that this is the case.

Suppose, *arguendo*, that the independence condition is met, and consider how international law might help those over whom it claims jurisdiction to improve their conformity to right reason, as I will label an agent's acting as he, she or it has most reason to act. One way it may do so is by correcting for ignorance or mistaken beliefs. Tasioulas offers as an example international legal rules created via the enactment of multilateral treaties (2010: 101). The process whereby such rules are crafted makes it likely that they reflect information that any single party to the convention would fail to acquire on its own, and so fail to take into account when deciding how to act (e.g., what particular foreign policy or domestic legal regime to adopt). Moreover, negotiations over multilateral treaties can serve as a useful corrective to biases that undergird parties' mistaken beliefs, once again facilitating practical reasoning that is better informed and so likely to more closely approximate or conform to right reason than would unilateral decision-making. In some cases, international law may also provide some of its subjects with access to expertise they cannot produce domestically.

International law can also protect its subjects against what Tasioulas labels volitional defects. For example, state officials may come under great pressure from more powerful states, representatives of multinational corporations, or

domestic interest groups to engage in conduct that promotes those actors' perceived interests or vision of justice but that is contrary to right reason. International law provides a mechanism for resisting such pressure. International law's ability to steel its subjects against temptation is particularly important given the general human disposition to impatience, the tendency to treat oneself or one's circumstances as exceptional, and the fact that the interests of legal officials in remaining in power may diverge from both the long-term interests of the state's present and future members and the demands of justice.

Finally, and perhaps most importantly, international law can enhance its subjects' conformity to right reason by solving collective action problems (Buchanan and Keohane, 2006: 107–8; Besson, 2009: 352–7, 366–70; Tasioulas, 2010: 102). In some cases, it may do so by rendering more determinate a shared but vague standard of right conduct, where the parties are rightly indifferent between any of a number of possible ways in which the abstract standard may be made more concrete. Far more common, however, is disagreement over what justice requires, forbids or permits with respect to the use of force, international migration, trade in goods, financial transactions, the use of and control over the oceans or the earth's atmosphere, etc. In all these cases, international actors are generally likely to do better at approximating justice by conforming to common standards set out in international law than by acting on their own judgment. In some cases, such as addressing climate change, this may be because justice can only be achieved via the cooperation of (nearly) all states. In other cases, the attempt by a state or international organization to act on its own understanding of what justice requires, and contrary to international law, may result in an immediate gain in justice in one place, and/or *vis-à-vis* one type of conduct, but a longer term and greater reduction in justice in that place or in others, and *vis-à-vis* that type of conduct or others. One reason this is so is that one state's genuinely just war or trade regime may frequently appear to another to be an act of aggression or protectionism. A second reason is that state officials acting in bad faith may offer the example of another state's just but illegal conduct as cover for their own unjust conduct. Each of these arguments points to the likely bad consequences of deviating from the common standards of right conduct set out in international law. I consider below additional, non-instrumental, justifications for the claim that actors have a duty to obey international legal norms that facilitate justice-enhancing collective action.

International law can successfully address the problem of collective action raised by differing understandings of justice only if most of those whose cooperation is needed, especially the most powerful, take it to be authoritative. If other international legal subjects do not, then each party has little reason to assume that conformity to international law *per se* is the best means for it to approximate the just treatment of others and its own just treatment by them. Thus, where international law's legitimacy is a function

of its facilitating justice-approximating collective action, international law's *de facto* legitimacy is a necessary condition for its *de jure* authority (Raz, 2006: 1036). It follows, Tasioulas notes, that 'in order to maintain this source of legitimacy... public international law must not stray too far from implementing values that resonate widely with its would-be subjects' (2010: 102). As a consequence, at a given point in time the content of international law may diverge considerably from what justice truly requires. Yet as long as international legal subjects are more likely to act justly (or, perhaps better, less likely to act unjustly) by obeying international law than by acting on their own judgment, they have a duty to do so.

The instrumental account entails that international law's legitimacy may be piecemeal. For any particular international legal norm or legal regime, the NJC may fail to establish its authoritativeness *vis-à-vis* some or even all of the actors whose conduct it purports to direct. Generally speaking, existing international law hews quite closely to the interests of powerful states (or elites within those states), and gives highest priority to the preservation of peace and stability, often at the expense of justice. As a consequence, its dictates may often diverge from what right reason requires precisely because it is the result of legislative activities that are not undertaken on the basis of a good faith effort to identify it. A full defence of these assertions would require both an argument for a substantive conception of international or global justice and a careful empirical analysis of existing international law, neither of which I can carry out here. Still, even those who maintain that international law is not merely the product of power and interest acknowledge that those two factors play a considerable role in determining its content. If so, then on the instrumental account a fair bit of scepticism regarding the extent of international law's legitimacy seems warranted.

### *How can we identify legitimate international law?*

Thus far I have focused on the various ways in which international law can satisfy the NJC. Yet a theory of the legitimacy of international law should do more than explain the normative basis of international law's legitimacy – that is, what *makes* it authoritative. It should also offer guidance on how to *identify* legitimate international law, reasons to believe that international law or international legislators meet the normal justification condition. The complex standard of legitimacy for global governance institutions advocated by Allen Buchanan and Robert Keohane (2006) provides an excellent starting point for developing such an account (see also Kumm, 2004).

The complex standard consists of a set of substantive and procedural requirements that, when met, provide compelling evidence for the legitimacy of a global governance institution's attempt to rule.<sup>3</sup> The former include not persistently violating the least controversial human rights, not forgoing institutional changes that would provide greater benefits than existing ones and

that are both feasible and accessible without excessive transition costs, and not intentionally or knowingly engaging in conduct at odds with the global governance institutions' purported aims and commitments. The latter include mechanisms for holding global governance institutions accountable for meeting the aforementioned substantive requirements as well as mechanisms for contesting the terms of accountability; that is, the ends that global governance institutions ought to pursue and the means they should employ in doing so. To be effective, mechanisms for holding officials accountable must be broadly transparent. This includes making information about how the institution works not only available, but accessible to both internal and external actors, for example inspectors general and nongovernmental organizations, as well as the provision of public justifications for the most consequential efforts at governance.

What unifies the various elements of the complex standard is that they all provide the legal subjects of global governance institutions with reason to believe that officials in these institutions are making a good faith effort to determine what justice requires. The point may be clearer if we consider the converse: the absence of one or more elements of the complex standard of legitimacy gives those subject to an attempt at global governance reason to doubt that the putative rulers aspire to enhance their subjects' conformity to right reason. Instead, subjects may suspect, and perhaps rightly so, that governance is being exercised in pursuit of other goals, such as the national interest of powerful states or the private interests of businesses or religious groups, and contrary to the demands of justice. Consider, for example, the substantive elements of the complex standard: no attempt at international governance, either by global governance institutions or by states that persistently violated 'the least controversial human rights' or that systematically discriminated in the application and enforcement of international legal norms, could plausibly claim to be making a good faith effort to enhance its subjects' conformity to right reason. The procedural elements that comprise the complex standard evidence a good faith effort to determine what right reason requires partly because they militate against efforts to deploy international law for private interest rather than the public or common good, and partly because they improve the quantity and quality of the information on the basis of which global governance is conducted. As the first of these claims implies, the complex standard's procedural elements are desirable not only for their epistemic value but also because they are likely to facilitate efforts at governance that actually succeed in being legitimate; that is, that actually meet the normal justification for authority. As an example of the second claim, the requirement that global governance institutions facilitate effective engagement with external epistemic agents such as Human Rights Watch and the International Committee of the Red Cross likely leads to more informed and less biased rules and decisions than either these institutions' officials or those they directly or indirectly govern would achieve on their own.

### 3 Non-Instrumental Arguments for International Law's Legitimacy

International law's value as a means for enhancing its subjects' conformity to right reason is not the only ground theorists have offered for its legitimacy. Many have sought instead, or at least in addition, to defend non-instrumental accounts, according to which obedience to legitimate international law constitutes the just treatment of others. At least since the nineteenth century the most prominent such account used to justify international law's claim to authority has been state consent. More recently, theorists have identified considerations of fair play as a basis for international law's legitimacy, or maintained that the justifiability of international law's claim to authority rests on it being democratically enacted. I consider each of these approaches in turn.

#### *Consent*

Consent involves a minimum of two parties: an agent who grants another a claim-right or power and thereby acquires a correlative duty or liability, and an agent who acquires the right. For example, in signing and ratifying a treaty setting out the terms that will govern their use of a river that runs through or along both of their territories, two states may be said to grant one another rights to conduct that conforms to those terms, and to acquire obligations to act as the treaty directs. Similarly, in joining the WTO, states consent to its authority to resolve their disputes regarding compliance with their obligations under that treaty. In conforming to the terms of a treaty to which they have consented, states uphold their duties to one another, which is to say that in at least one respect they treat one another justly. They may also treat one another justly because the content of the treaty reflects or determines what justice truly requires *vis-à-vis* the use of a common resource, trade, the use of force, etc. This need not be the case, however; a state that has consented to govern its conduct according to certain terms may not unilaterally disregard them simply because it believes that justice or its national interest require contrary conduct.<sup>4</sup> Rather, the state owes its obedience to the other party or parties to the agreement, or, in other words, the state's consent makes the norms that comprise the agreement authoritative.

Consent's attraction as a basis for a duty to obey the law rests on its ability to reconcile a conception of agents as morally free and equal with their submission to authority. If an agent chooses to place himself under a duty to another, then those duties are the product of the agent's control over his life, not requirements imposed upon him or a facet of his subjugation to the will of another agent. If consent is to manifest this kind of control, it must be free and informed; agreements that are made involuntarily or as a result of fraud generate neither moral duties nor moral rights. Moreover, one agent may

consent on another's behalf only if the latter authorizes him to do so, since only then will the resulting obligations be properly characterized as a product of the obligated agent's control over his life. Finally, the moral freedom and equality of all agents places limits on the obligations that any can acquire via consent; even when free and informed, agreements to commit murder, theft, fraud, etc. are null and void.

Each of the foregoing conditions on the generation of moral obligations via consent provides a basis for challenging consent-based arguments for international law's legitimacy. First, in light of the costs their citizens are likely to suffer if they refuse, the consent of economically and militarily weak states to bilateral or multilateral treaties frequently fails to qualify as voluntary. Even where the costs of non-participation do not rise to the level necessary to render agreement non-voluntary, if the distribution of benefits and burdens set out in the agreement reflect unrectified past injustices committed by one party against another, then the agreement may still be at odds with the commitment to the treatment of all as free and equal that underpins consent-based accounts of legitimacy. Second, states increasingly consent to general frameworks that are then filled in by treaty-based but partly autonomous bodies that exercise quasi-legislative and/or quasi-judicial powers (Kumm, 2004: 914). As a consequence, states may find themselves subject to obligations they did not intend nor even suspect they would acquire when they consented to the original framework. Generally speaking, while an agent need not know the precise details of the obligation she is acquiring via consent, the greater her ignorance of these matters the less compelling it will be to describe the agent's consent as the exercise of control over her life rather than as an abdication of control to another. Insofar as a treaty permits signatories to withdraw their consent to its terms, as many do, it might be argued that a state's decision not to do so constitutes its tacit or ongoing consent to specification of its terms by semi-autonomous international organizations such as the WTO or the International Criminal Court (ICC). Of course, this argument works only if the costs of withdrawal from the treaty are not so high as to render continued submission to it non-voluntary.

Second, the current governments of some and perhaps even many states lack the legitimate authority to consent to obligations on behalf of the political communities they claim to represent. Clearly this is true if a necessary condition for state officials having the standing to obligate their citizens under international law is that the state be sufficiently democratic and respectful of some core set of its subjects' rights. It may still be true of a fair number of states even if we should employ a somewhat broader understanding of what it is for state officials to adequately represent their citizens. Whether democratic or not, states may consistently fail to represent the interests of certain domestic minorities, such as indigenous peoples. The existence of persistent minorities challenges any state's claim to the standing to acquire obligations on behalf of all its subjects. Finally, some theorists point to the fact that much international law-making is carried out not by

states' legislators, but by members of their executive branches, as a reason to doubt that those who purport to acquire international legal obligations on their citizens' behalf have the moral standing to do so. In some cases, such as legislative ratification of treaties negotiated by a state's executive branch, those who are empowered by a state's constitution to make law have some say in its acquisition of international legal obligations. Where that amounts to little more than an up or down vote on terms negotiated entirely, and perhaps secretly, by the executive, there may be reason to doubt that legislative consent suffices to render the resulting duties consistent with the treatment of the political community's members as free and equal.

Third, if any international legal norm or regime requires conduct that treats people in a manner incompatible with a proper understanding of their moral status as free and equal, then no state's consent to abide by those norms generates a genuine moral duty to do so. Thus, if Thomas Pogge is right to maintain that the WTO, the IMF, and the World Bank systematically contribute to the persistence of severe global poverty, and if in doing so they fail to treat the global poor as a proper understanding of their moral status as free and equal requires, then no state's consent to rule by these organizations gives rise to a moral obligation to act as they direct (Pogge, 2010). Much depends on what the proper understanding of people's moral status as free and equal is, of course. However defined, though, if consent matters because, and to the extent that, it enables agents to control or shape their lives by altering their rights, duties, powers, and immunities vis-à-vis others, then it cannot render permissible – let alone obligatory – conduct at odds with a proper appreciation for any agent's moral freedom and equality.

The foregoing arguments suggest that even where consent seems most likely to justify international law's claim to legitimacy, namely with respect to treaty-based law that applies to states, its success is likely to be piecemeal at best. This conclusion is only strengthened when we consider customary international law (CIL). Where CIL is a product of longstanding state practice, then those states that voluntarily and knowingly engage in the practice, or that at least do not persistently object to it, might be said to tacitly consent to the norms that structure that practice. Once again, though, this conclusion does not follow for those states whose participation or failure to object is non-voluntary; for example, postcolonial states subject to customary international legal norms developed largely by European powers prior to or during the colonial era. Consent also appears to be an inadequate basis for the legitimacy of international legal norms that apply directly to individuals. These observations are typically offered to support the conclusion that at best consent offers an incomplete ground for international law's legitimacy, but it is worth noting the possibility of drawing the opposite conclusion, namely that the truth of the moral view that underpins consent-based accounts of legitimacy simply shows significant portions of international law to be illegitimate.

Thus far I have focused on the extent to which (state) consent actually provides a successful justification for international law's claim to authority. A

more basic question, though, is whether consent is even a necessary condition for international law's legitimacy. If all agents necessarily owe certain moral duties to non-compatriots, and if they can discharge those duties only by treating international law, or at least certain international legal norms and institutions, as authoritative, then it follows that they have a moral duty to do so. The necessity of obedience to international law for the discharge of an agent's natural moral duties may be empirical and contingent, as Raz maintains, or it may be a conceptual truth, as Kant argued. In circumstances characterized by disagreement over what counts as rightful conduct, Kant claimed, agents have a moral duty to subject themselves to a common juridical order; that is, one in which all are governed by common standards, rather than each being free to act on his or her understanding of what counts as the treatment of persons as free and equal (Kant, 1996/1797: 456). For Kant, then, justice can only be (fully) realized through the rule of law, or, more precisely, a multilevel legal order composed of both the domestic law of a republican state and an international law governing relations between such states (and their citizens).

### *Fair play*

The principle of fair play offers an alternative basis for states' and perhaps other international actors' duty to obey international law (Lefkowitz, 2011). On one common interpretation, the principle states that agents who benefit from others' participation in a cooperative scheme have a duty to contribute their fair share to its operation, as long as they rank receipt of those benefits at the cost of contributing their fair share to the scheme's operation over not enjoying those benefits and not bearing the costs of contribution to the scheme. An agent who fails to contribute his or her fair share when these conditions are met free-rides on the contributions of others; he or she takes unfair advantage of others' good faith sacrifices of their liberty or discretion. As noted above, international law frequently functions to facilitate mutually advantageous collective action among states and other international actors. If these actors take the benefits they enjoy as a result of others' deference to these legal norms to outweigh the costs of deferring themselves, then they have a fair-play duty to obey the law. In contrast to the aforementioned instrumental argument for the legitimacy of international legal norms that facilitate morally mandatory collective action, the fair-play argument treats deference to such norms as constitutive of the fair treatment of other international actors and required for that very reason, independent of any effects free-riding on others' obedience to international law may have.

### *Democracy*

At the domestic level, some form of democratic decision-making, understood in individual-majoritarian terms, is widely viewed as at least a necessary



condition for legitimacy, so much so that few rulers feel able to go without at least the façade of democratic rule. It may seem natural, therefore, to conclude that the legitimacy of global governance institutions and international law more generally requires that they become more democratic. Whether this is so depends, however, on the manner in which democracy contributes to law's legitimacy. Like legitimacy, democratic governance may be defended on both instrumental and non-instrumental grounds. As an example of the former, individual-majoritarian decision-making may have epistemic advantages over the feasible alternatives (Goodin, 2003; Estlund 2009). Depending on how substantive a conception of democratic decision-making we employ, it may result in greater collective deliberation than would otherwise take place. Several important points follow from this observation. First, democracy's instrumental value contributes to its legitimacy only insofar as it increases the probability that democratically enacted law meets the NJC - that is, improves its subjects' conformity to right reason. Second, if democracy is valuable only because its output satisfies the NJC, then there is little reason to think democracy is a necessary condition for law's legitimacy. In some cases, non-democratic decision-making procedures may serve equally well or better at producing legitimate law; for example, where democratic decision-making procedures systematically lead to unjustifiable discrepancies in the weight or importance given to the interests of some over others, as state-level democratic governance may do vis-à-vis the interests of citizens and non-citizens (Buchanan and Keohane, 2006: 415-16). Indeed, even if democratically enacted law best satisfies the NJC, non-democratically enacted law will still be legitimate if no democratic decision-making procedure exists and those over whom the law claims authority do better by deferring to it than by acting on their own judgment. In short, if democracy's value is entirely instrumental, then international law's democratic deficit need not preclude its legitimacy.

Many of those who defend democratic decision-making as a necessary condition for the legitimacy of domestic law do so on non-instrumental grounds, however. Thomas Christiano (2008), for example, argues for democratic authority on the grounds that in circumstances characterized by diversity, cognitive bias, and fallibility, the treatment of all as moral equals requires that agents be able to see that the shared institutions that structure their common lives together treat them as equals. Legitimacy depends on public equality. This requires in turn that each agent has an equal say in the shaping of those institutions; or, in other words, that the legal order that frames their interactions with one another be the product of, or at least subject to control by, a democratic assembly. Yet Christiano resists the extension of this last claim to the international legal order. In part he worries that a global peoples' assembly would fail to be sufficiently democratic; for example, it might too readily produce persistent minorities and thereby fail to instantiate a public commitment to the moral equality of all (2010: 133-4). More intriguing,

though, is his argument that, at a global level, the public treatment of all as equals does not call for democratic governance, and need never do so (2010: 130–3). Rather, Christiano maintains that a form of democratic governance in which each individual has an equal say in shaping political and legal institutions is called for only among those who share a common world, defined as one in which there is a great deal of interdependence among agents' interests and where each has a roughly equal stake in the normative order produced or sustained by the institution's rule.

Consider the latter point first. If a system of rules will affect two parties to very different degrees, with one party's life barely impacted while the other's plans and prospects are deeply dependent upon the content of these rules, then it would be unfair to give them an equal say in settling what those rules should be. To do so would give the first party too much control over the second, with the latter unable to view the process as one that publicly treats all parties as moral equals. But why does the public equality argument for democratic rule apply only when there is a great deal of interdependence among agents' interests? Why not treat each interest or issue separately? Christiano replies that 'since democratic decision-making must be taken by majority rule, it is important that there be many issues so that those who come up losers on some issues be winners on others' (2010: 131). In the absence of recurring decision-making on a bundle of issues, losers in a majority-rule process have little reason to view it as publicly treating them as equals. Like permanent minorities, they have no procedural evidence, namely victories in the decision-making process, that they can point to as reason to believe that the governing institution is truly committed to the equal treatment of all those it rules.

Christiano acknowledges a few instances of interdependence among the interests of all individuals around the world, as in the case of climate change. However, he maintains that international legal institutions governing trade and the environment typically impact individuals' interests far less than domestic legal orders do, and, at least by implication, not enough to meet the first of the two conditions for the existence of a common world. Moreover, even when international legal norms do impact the lives of individuals around the world, they do so to very different degrees. The life plans and prospects of some individuals may depend a great deal on international trade, while for others the impact may be quite small. Were all to exercise an equal say in determining the international rules that ought to govern cross-border trade, then those whose lives depend heavily upon those rules could rightly complain that the procedure for governing global trade did not publicly treat them as moral equals.

Christiano rightly rejects the inference from the fact that the conduct of people in one state affects the interests of those living in other states (or, more narrowly, affects those interests that ground human rights) to the conclusion that the former can treat the latter justly only by submitting to a common

legal order whose laws are enacted by a directly elected global parliament. However, the arguments he offers to support this conclusion elide the fundamental error in the inference, namely that if it is possible for agents to treat one another justly by limiting their interactions so that they do not threaten to setback one another's fundamental interests, then they are not morally required to submit to a common set of rules that govern these interactions. Instead, the decision to do so is one over which agents exercise moral discretion. The question of whether agents are morally required to submit to a common set of rules regulating some type of conduct is prior to the question of how the rules of such an order ought to be made if they are to be legitimate. The principle of public equality provides an answer to the latter question, but to answer the former, Christiano needs a version of the affected interests principle, namely one that holds that agents have a duty to submit to a common legal order if and only if doing so is necessary to avoid setbacks to their own and/or to others' fundamental interest in judgment.

Rather than a global democratic assembly, Christiano maintains that efforts to establish international law's legitimacy should focus on making it the product of, or subject to control by, a fair system of voluntary association among highly representative states, or a fair democratic association (2010: 126–9). In principle, at least, state-level democratic procedures could offer individuals a voice in the shaping of international legal norms, and in practice they might better serve this end than would other legislative mechanisms, even if they fell well short of the ideal. An international legal order in which all states' commitments were genuinely voluntary, and in which the procedures for legislating, applying, and enforcing international legal rules and decisions did not reflect unjustifiable asymmetries in bargaining power, would be one whose product or operation could be viewed by all individuals as committed to their equal treatment. Moreover, the justification of international law's legitimacy in the moral ideal of a free and equal association of internally legitimate democratic states provides a non-consensual basis for the legitimacy of those international legal norms that rule out conduct at odds with such an ideal – for example, the *jus cogens* prohibitions on slavery, genocide and aggressive war. Were the conditions for fair democratic association met, all individuals would have compelling reason to believe that both the domestic and the international institutions of collective governance to which they were subject were committed to the equal treatment of all, and so their efforts to rule them legitimate.

It may be worth emphasizing that Christiano does not deny that some existing international legal norms and practices enable agents residing in one state to violate the basic rights (or setback the fundamental interests) of people living in other states. Nor does his argument necessarily entail that the morally optimal world is one in which states, or the common worlds they constitute, exist as independent islands subject only to international legal rules that aim to preserve their independence. Rather, Christiano maintains

only that efforts to reform the existing international legal order so that it satisfies the principle of public equality, and therefore enjoys legitimacy, should be in the direction of creating a free democratic association, not a global democratic parliament.

Yet the fair democratic association model of global governance confronts a serious difficulty. If voluntary agreements are to conform to the principle of public equality, they must be negotiated and entered into in free and fair conditions. Securing such conditions, however, requires a public law whose legitimacy cannot itself depend upon voluntary agreement. A legitimate public international law consists in a set of impartial rules that aim at the common good, and such rules cannot themselves be the product of agreements in which parties act partially, that is, to advance their own interests. This is true even if actors seek to advance their interests only within what they take to be the moral limits on doing so, for the very reasons that Christiano offers when defending the legitimacy of a liberal democratic state's domestic law.<sup>5</sup> The conclusion Christiano draws is that realizing the conditions for a free democratic association 'seems to drive us in the direction of global institutions, which in turn must be evaluated in terms of democratic principles' (2011: 92). This appears to leave us at an impasse, unable to ground international law's legitimacy in either its enactment by a global democratic legislature or in a voluntary association of democratic states.

#### 4 Why Care About Legitimacy?

The foregoing discussion suggests that, at present, international law enjoys less, and perhaps far less, legitimacy than it claims (or that some claim on its behalf). Does that matter? Yes and no. As I mentioned earlier, one conclusion we should be careful not to draw from the illegitimacy of international legal norms or global governance institutions is that agents have no moral reasons to support them, including in some cases acting as they require, or to work for their reform rather than their replacement. Crucially, though, the sort of arguments that can be offered in support of complying with illegitimate rules and institutions differs from the one available when rules and institutions are legitimate, namely that one has a moral duty to obey those rules and institutions. Moreover, where international law's illegitimacy owes largely to its being an instrument for the unjust advancement of national or special interests by the relatively powerful, the less powerful may have little choice but to play by the existing legal rules. Doing so may be the right thing to do not only prudentially but also morally, if conduct that violates those rules is either unlikely to bring about a more just world or, possibly, if there are limits on the setbacks to their own interests that agents must bear in order to combat injustice.

Nevertheless, there are compelling reasons to pursue the goal of a more legitimate international legal order. First, greater legitimacy entails an

increase in justice. This conclusion follows necessarily from Raz's account of what makes law legitimate; a world with more legitimate law is one in which actors more often conform to right reason than they do in a world with less legitimate law. Empirically, we have compelling evidence that mechanisms of accountability, transparency, and participation in the crafting of law and in governance more generally typically lead to outcomes widely viewed as just, or at least as more just than those produced by governance in the absence of such mechanisms. Second, it seems plausible to maintain that an increase in the actual or *de jure* legitimacy of international law will lead to an increase in its *de facto* legitimacy, which will in turn increase international law's actual legitimacy by making it more effective at guiding its subjects' conduct.<sup>6</sup> The converse point may be even more powerful; the failure to pursue greater legitimacy for the international legal order may lead to more injustice as justifiable cynicism erodes some of the advances in, for example, managing conflicts, promoting human rights, and protecting the environment to which international law has been a significant contributor. Third, it may be possible to reach greater agreement regarding when international law enjoys legitimacy than when it is just. Recall in this regard Christiano's argument that democratic governance allows individuals to see the political institution that rules them as committed to the equal advancement of all its subjects' interests even when the substance of some of its laws offers reason to doubt it. Legitimacy also requires less than justice, both in terms of what it takes for an agent to enjoy legitimate authority and in terms of the duty it imposes on agents. In particular, an agent may concede the law's legitimacy while working to change it (perhaps even by acts of civil disobedience), which may make actors more willing to concede a norm's legitimacy than its justice. Finally, it may be that we should be more concerned with the legitimacy of international law than with its justice. The aforementioned possibility that we are more likely to achieve widespread agreement on legitimacy than on justice provides a pragmatic reason to draw this conclusion. Although justice is the ideal, legitimacy may be the best we can do, and therefore, at the very least, we should be extremely hesitant to risk a diminution in international law's legitimacy for an increase in its justice. There is also a principled argument for focusing more on legitimacy than on justice, however, namely the one associated with Kant and briefly mentioned above, according to which just relations between agents can only be realized within a particular kind of legal order.<sup>7</sup> Only in a republican legal order can agents enjoy freedom as independence or non-domination, meaning lives in which they neither exercise arbitrary control over others nor are subject to such control themselves. If these are the terms in which we ought to understand justice, then the pursuit of global justice requires nothing more, but nothing less, than the realization of a fully legitimate international legal order.

## References

- Besson, S. 2009. 'The Authority of International Law: Lifting the State Veil', *Sydney Law Review* 31: 343–380.
- Bodansky, D. 2013. 'Legitimacy in International Law and International Relations', in J. L. Dunoff and M. A. Pollack, eds., *Interdisciplinary Perspectives on International Law and International Relations: The State of the Art*, 321–342. New York: Cambridge University Press.
- Buchanan, A. 2010. 'The Legitimacy of International Law', in S. Besson and J. Tasioulas, eds., *The Philosophy of International Law*, 79–96. New York: Oxford University Press.
- Buchanan, A. and Keohane, R. O. 2006. 'The Legitimacy of Global Governance Institutions', *Ethics and International Affairs* 20(4): 405–437.
- Christiano, T. 2008. *The Constitution of Equality: Democratic Authority and Its Limits*. Oxford: Oxford University Press.
- Christiano, T. 2010. 'Democratic Legitimacy and International Institutions. In S. Besson and J. Tasioulas, eds., *The Philosophy of International Law*, 119–138. New York: Oxford University Press.
- Christiano, T. 2011. 'Is Democratic Legitimacy Possible for International Institutions?', in D. Archibugi, M. Koenig-Archibugi and R. Marchetti, eds., *Global Democracy: Normative and Empirical Perspectives*, 69–95. New York: Cambridge University Press.
- Estlund, D. 2009. *Democratic Authority*. Princeton, NJ: Princeton University Press.
- Goodin, R. 2003. *Reflective Democracy*. New York: Oxford University Press.
- Hohfeld, Wesley. 1919. *Fundamental Legal Conceptions*, ed. W. Cook. New Haven, CT: Yale University Press.
- Kant, I. 1996/1797. 'The Metaphysics of Morals', in M. J. Gregor, ed., *The Cambridge Edition of the Works of Immanuel Kant: Practical Philosophy*, 353–604. New York: Cambridge University Press.
- Kumm, M. 2004. 'The Legitimacy of International Law: A Constitutionalist Framework of Analysis', *European Journal of International Law* 15(5): 907–931.
- Lefkowitz, D. 2011. 'The Principle of Fairness and States' Duty to Obey International Law', *Canadian Journal of Law and Jurisprudence* 24(2): 327–346.
- Peter, F. 2014. 'Political Legitimacy', *The Stanford Encyclopedia of Philosophy*, ed. E. N. Zalta. <http://plato.stanford.edu/archives/win2014/entries/legitimacy/>.
- Pogge, T. 2002. *World Poverty and Human Rights*. Malden, MA: Polity.
- Pogge, T. 2010. 'The Role of International Law in Reproducing Massive Poverty', in S. Besson and J. Tasioulas, eds., *The Philosophy of International Law*, 417–435. New York: Oxford University Press.
- Raz, J. 1979. *The Authority of Law*. Oxford: Clarendon Press.
- Raz, J. 2006. 'The Problem of Authority: Revisiting the Service Conception', *Minnesota Law Review* 90: 1003–1044.
- Tasioulas, J. 2010. 'The Legitimacy of International Law', in S. Besson and J. Tasioulas, eds., *The Philosophy of International Law*, 97–116. New York: Oxford University Press.

#### Chapter 4 Global Political Justice

- 1 By 'power', I mean the capacity of an agent to bring about its goals. By 'political power', I mean power exercised within and through political institutions, which are sites for the organized contestation and collaborative pursuit of multiple agents' varied goals.
- 2 By 'domination', I mean arbitrary or institutionally uncontrolled power (see Pettit, 2012).
- 3 It is important to note, however, that the distinctions between these two types of global justice theories are far from clean, and that theoretical problems of these two kinds are deeply intertwined in some areas of debate – for instance in arguments about the character and normative significance of the 'global basic structure' (Ronzoni, 2009).
- 4 The justificatory structures for internationalist and cosmopolitan models of global democracy are thereby parallel, albeit with the input of different assumptions at endogenous and exogenous levels; for further discussion, see Macdonald, 2003.
- 5 Accounts of this kind depend in part on values exogenous to the democratic ideal, in order to specify *which interests* warrant special democratic empowerment within transnational political institutions.
- 6 It is important to note that the authors I cite here invoke varying conceptions of the 'political' and the nature of 'political' institutions, some of which differ from the conception I am invoking here (as described in note 1). As such, not all would use the label 'political', as I do, to describe the international institutions that are subjects of legitimacy assessments.

#### Chapter 5 The Legitimacy of International Law

- 1 This characterization of ruling or governing takes practical authority to be its essential feature. Some contend instead that coercion constitutes its essential feature, so that ruling or governing consists of enacting, applying and enforcing the law, but not necessarily commanding or ordering conduct; i.e., asserting that subjects have a duty to obey the law as such. I discuss the relation between legitimate authority and coercion later in this section. For an overview of different conceptions of political legitimacy, see Peter, 2014.
- 2 Three points warrant mention, lest the reader take the argument in the text to show the legitimacy or illegitimacy of international law to be practically irrelevant. First, to claim that on some occasions an agent ought to act as an illegitimate authority would have her act is not to say that she should always, or even often, do so. Second, it is quite common to appeal to legal obligation both in private deliberation and public justification or criticism. It is worth considering, therefore, when such arguments succeed and when they do not – i.e., when law is legitimate and when it is not – even if in some cases where such appeals carry no weight there are independent moral and/or prudential reasons to do<sup>4</sup>that which the law would have one do. Finally, it may be that some of the moral value of conformity to law can be realized only if the law is legitimate; for instance, if obedience to legitimate law is not merely a means to treating others justly, but constitutes respect for others' equal claim to determine what justice requires. I

develop these last two points in slightly greater detail in the final section of this chapter.

- 3 These two categories correspond closely to the categories of output and input legitimacy employed by many international relations or IR-influenced scholars; see Bodansky, 2013: 330.
- 4 Note that the claim here concerns whose *judgment regarding what justice requires* ought to control. As I discuss below, an agent's consent to perform some act cannot render permissible what it would otherwise be unjust for him to do.
- 5 See also Pogge, 2002, for an argument that partiality is permissible only within the confines of impartial rules structuring interactions between states, not in the making of the rules that are to govern those interactions.
- 6 See Bodansky, 2013, for a brief overview of empirical studies regarding factors contributing to international law's *de facto* legitimacy.
- 7 This conclusion holds for Christiano as well.

### Chapter 6 Legitimacy and Global Governance

- 1 We would like to thank Eva Maria Nag and David Lefkowitz for their extensive written comments on this chapter.

### Chapter 7 Just War and Global Justice

- 1 In his piece, to which I am indebted and which has partly inspired my work on this subject, Nardin suggests that designing a general framework for thinking about just war and global justice is an important challenge for political theory, and hypothesizes (drawing on Kant) that focusing on the justifiability of coercion might help us address it. As a first step in building such a framework, Nardin then discusses the ethics of humanitarian intervention. This discussion, though, suggests that Nardin himself has not fully appreciated the implications of his original insight. He argues that humanitarian intervention is grounded in concerns of justice, rather than beneficence. From this, he extrapolates a general duty of justice to protect people from violence. But, he continues, 'if states have a duty to intervene when people are being massacred, they might also have a duty to act [coercively] when people are dying of starvation or disease' (2006: 464). Nardin then concludes that 'a coercive (tax-based) scheme of global poverty relief might be justified' (2006: 465). The problem with this argument is that it does not show any so-far unappreciated connection between global justice and just war theory. If one's preferred theory of justice says that the current global distribution of entitlements is unjust, then it *follows* that coercion may be rightfully employed to enforce the correct scheme. The idea that people might be taxed for the sake of justice is one most theorists of justice already accept. The more interesting point, which I try to develop in this chapter, is not that justice-based entitlements may be rightfully enforced, but that *war itself* (which involves not only the use of coercion, but of *lethal* coercion) can be seen as a species of enforcement of *entitlements*. This, in turn, opens up the possibility for mutual testing between theories of the just war (specifically *ius ad bellum*) and theories of global justice – a possibility Nardin himself does not consider.